STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

      Plaintiff-Appellee,

v

DOUGLAS MARK MISCHLEY,

      Defendant-Appellant.

Before: Fitzgerald, P.J., and Holbrook, Jr. and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by jury of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(f); MSA 28.788(3)(1)(f). Defendant was sentenced to serve four to fifteen years in prison. We affirm.

On appeal, defendant raises two arguments. First, that there was insufficient evidence to prove that he touched the complainant with a sexual purpose and, second, that the trial court abused its discretion when it refused to allow his former wife to testify regarding his inability to achieve an erection while intoxicated.

Due process requires the prosecution in a criminal case to introduce sufficient evidence to justify a trier of fact in its conclusion that the defendant is guilty beyond a reasonable doubt. *People v Fisher*, 193 Mich App 284, 287; 483 NW2d 452 (1992). In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Sexual purpose is an element of the offense of CSC II. *People v VanderVliet,* 444 Mich 52, 85; 508 NW2d 114, amended 445 Mich 1205 (1994); *People v Lasky,* 157 Mich App 265, 269; 403 NW2d 117 (1987). In *People v Duenaz,* 148 Mich App 60, 64-66; 384 NW2d 79 (1985), this Court held that evidence showing that the defendant had pulled the complainant onto the floor, opened her shirt and fondled her breasts, was sufficient to establish that the defendant had intentionally touched the complainant's breasts for the purpose of his sexual arousal or gratification. In the instant case, the complainant testified that defendant ripped open her shirt, tried to draw her nipples into his mouth,

squeezed her breasts, and tried to spread her thighs, and that defendant had an erection while doing these acts. That there were bruises on the complainant's breasts and thighs was corroborated by three other witnesses. This evidence was sufficient to establish that defendant touched the victim for the purpose of sexual gratification.

Next, defendant argues that the trial court erred when it refused to permit his ex-wife to testify regarding his ability to achieve an erection when intoxicated. The admission of evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994).

MRE 602 provides:

> A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony.

Defendant and his ex-wife had separated three years before the assault and had been divorced for two years. During the offer of proof, she stated that she knew from observation that defendant could not achieve an erection when intoxicated. However, there was no evidence that she knew whether defendant's problem with erections had worsened or improved over the ensuing years since their divorce. Therefore, her observations were too attenuated in time to confer upon her personal knowledge of his abilities at the time of the assault. The trial court did not abuse its discretion by refusing to permit this evidence.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell